

REMARKS

This Reply is being filed in response to the final Office Action mailed December 16, 2009 (the "Office Action"), and pursuant to 37 CFR § 41.33(a). This Reply is being filed after the date an appeal was filed and before the date a brief is filed.

By this Reply, no new claim amendments are requested except for the cancelation of claims 71-74, 76, 87, 115, 116, 118, 123, and 139, without prejudice or disclaimer. Upon entry of this Reply, previously amended issued claim 1, original issued claims 2-11, and reissue claims 122, 124-138, and 140-146 will be pending in this application. No new matter has been added by this Reply. Applicant requests entry of this Reply, and requests reconsideration and allowance of this application.

The last supplemental declaration filed in this application was filed along with the Reply dated August 7, 2009. Because this Reply only requests the cancelation of claims and does not otherwise make amendments to the claims, no new supplemental declaration should be necessary. See MPEP § 1444 II. No explanation regarding the support in the disclosure of the patent for these claim cancellations should be required. See MPEP § 1453 II.

Applicant has filed reissue application 12/551,346, which is a divisional reissue application of this application. Pursuant to MPEP § 1451, Applicant has amended the specification herein to update the required notice regarding the multiple related reissue applications.

Applicant appreciates the indication that claims 1-11 are allowable. See Office Action at pg. 6, ¶ 13.

In the Office Action, claims 115 and 116 were objected to as being in improper dependent form, claims 72-74, 76, and 87 were rejected under 35 USC § 112, second paragraph as being indefinite, and the specification was objected to under 35 USC § 132(a) in view of claims 73, 74, 123, and 139. Applicant does not concede the correctness of these objections and rejections. Nonetheless, as part of this Reply, Applicant proposes to cancel each of these claims. Therefore, upon entry of this Reply, each of these rejections and objections would be rendered moot, and these rejections and objections should be withdrawn.

In addition to the claim cancellations set forth above, Applicant requests reconsideration of the recapture rejection of claims 122, 124-138, and 140-146, which will be remaining along with claims 1-11, once this Reply is entered. Of these remaining claims, claims 122, 130, 138, and 146 are in independent form. Independent claim 122 recites "a steering system ... configured to simultaneously steer (i) both of the first and second front supports and (ii) only the first rear support;" independent claim 130 recites "a steering system ... configured to simultaneously steer (i) both of the first and second front tracks and (ii) only the first rear track;" independent claim 138 recites "a steering system ... configured to simultaneously steer (i) both of the first and second front supports and (ii) only the first rear support;" and independent claim 146 recites "wherein said at least one rear wheel or track is the only one of said rear wheels or tracks that is steered about a vertical steering axis." (Emphasis added.) Dependent claims 124-129, 131-137, and 140-145 all depend from these independent claims.

Applicant submits that the reissue claims 122, 124-138, and 140-146 avoid the recapture rule. The recapture rule may be avoided when the reissue claims are

materially narrower than the patent claims in other overlooked aspects of the invention.

Hester Indus., Inc. v. Stein, Inc., 142 F.3d 1472, 1482-83 (Fed. Cir. 1998).

The feature of "only one steerable" rear support or track materially narrows the reissue claims with respect to an overlooked aspect of the invention. This feature narrows the reissue claims because each of the original patent claims required both of the rear supports to be steerable or maneuverable. They excluded from their claim scope coverage over only one steerable rear support or track and do not provide a claim scope that is greater than the scope of the original patent claims. This feature is material at least because the reissue claims were not rejected in view of prior art. This feature was also overlooked because it was never included within the scope of any of the claims presented during prosecution of the original patent. The reissue claims recite a mutually exclusive embodiment from that of the original and issued patent claims.

In view of the above, Applicant respectfully requests entry of this Reply pursuant to 37 CFR § 41.33, which cancels claims reissue claims 71-74, 76, 87, 115, 116, 118, 123, and 139, thereby reducing the issues for appeal. In addition, in view of the above, Applicant submits that the remaining reissue claims 122, 124-138, and 140-146 are in condition for allowance. This Reply should allow for immediate action by the Examiner.

In view of the foregoing remarks, Applicant requests the Examiner's reconsideration of this reissue application, and in particular the recapture rejection with respect to claims 122, 124-138, and 140-146.

The Office Action contains characterizations of the claims with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization of the Office Action.

If the Examiner believes a telephone conversation might advance prosecution,
the Examiner is invited to call Applicant's undersigned representative at 202-408-4397.

Please grant any additional extensions of time required to enter this response
and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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By: 

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